IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.2225 OF 2006

M/s. Free India Concepts ...Petitioners.
V/s.
The State of Maharashtra & Anr. ...Respondents.

Shri A.M.Sarogi, adv. for the Petitioner.
Ms.M.H.Mhatre, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 5th June, 2007.

P.C.:

1. Rule.

2. Rule made returnable forthwith. With consent of the learned counsel for the parties, matter is taken up for final hearing and disposal immediately.

3. This petition is filed for quashing the complaint registered by Shivaji Nagar Police Station, Kolhapur vide Crime No.33 of 2002 at the instance of Respondent No.2, who was the first informant. The said C.R. was registered in the provisions of Sections 3,4 and 5 of Prize Chit and Money Circulation (Banning) Act, 1978.

4. It is contended on behalf of the petitioners that the provisions of the above Act of 1978 are not

applicable on the allegations made in the complaint. Reliance is placed on the order of this Court dated 10th July 2002 in Criminal Writ Petition No.800 of 2002, wherein the view taken was that such case would at the most amount to breach of contract for which remedy is to go to the Civil Court. That petition was filed against the order of the Magistrate discharging the accused in similar circumstances. The petition filed by the complainant against the said order was dismissed by this Court. The said order was upheld by the Apex Court by order dated 19th August, 2002 whereby the Special Leave to Appeal (Cri.) No.3401 of 2002 was dismissed. Thus the view taken in the identical case was upheld by the Apex Court. On this aspect neither the State not the Respondent No.2 joins issue. On the contrary both the Respondents agree that the view taken in the similar matter by this Court and confirmed by the Supreme Court, is in favour of the petitioners.

5. Besides this, the respondent no.2, on whose report the offence came to be registered, has filed his affidavit stating that the matter has been amicably settled between himself and the present petitioner and now he has no grievance of whatsoever nature against the petitioner. He has also no objection to allow the petition. Mr.Sarogi the learned counsel for the

petitioners has also placed reliance upon letter D.O.No.21-22-IT-2001 dated 31st March, 2003 issued by the Secretary to the Government of India in Ministry of Consumer Affairs, Food and Public Distribution, New Delhi addressed to the Chief Secretary of the Government of Maharashtra. In that letter, the Government of India has clarified that on several representations from the companies dealing with the direct/network/ multilevel marketing against the harassment by the police authorities under the provisions of the Prize Chits and money circulation (Banning) Act, 1978, this subject has been thoroughly examined in consultation with the Ministry of Law. The Government of India clarified that in their considered view, provisions of the said Act are not applicable to the companies dealing with the distribution of goods including multilevel/network marketing companies, in view of the interpretation in various judgments by the Supreme Court. The Government of India requested the Government of Maharashtra to instruct officials concerned so as to avoid harassment and commercial losses to the bonafide investors in such companies.

6. In view of the consistent view taken by this Court in number of matters, Supreme Court and the above letter dated 31st March, 2003 from the Government of

India to the Chief Secretary of the Government of Maharashtra, Mrs.Mhatre the learned APP concedes that petition deserves to be allowed and Regular Criminal Case No.236 of 2003 pending before the J.M.F.C., Ichalkaranji based on the Crime No.33 of 2002 registered by Shivaji Nagar Police Station, District Kolhapur, is liable to be quashed.

7. In view of the above circumstances, petition is allowed in terms of prayer clause (a).

8. Rule made absolute accordingly.

(J.H.Bhatia,J.)